No. 9564

In the

United States Circuit Court of Appeals

For the Ninth District

TOM WING ART, alias WING FOOK TOM, alias SHORTY YUEN,
Appellant

vs.

WILLIAM A. CARMICHAEL, District Director of U. S. Immigration and Naturalization Service, District No. 20.
Appellee

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

APPELLANT'S REPLY BRIEF

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APPELLANT'S REPLY BRIEF.

The appellee's argument is divided into three parts, to-wit:

1. Was there any evidence to sustain the decision of the Secretary of Labor?

2. Was a fair hearing accorded?

3. Must an alien be caught in the act of receiving benefits from prostitution, etc., at time of arrest in order to be comprehended within the statute directing deportation of such classes of aliens?

Answering the first question, it is apparent therefrom that counsel for the appellee has missed completely the point of appellant's contention. Appellant makes no point as to whether the evidence sustains the facts

found by the examining inspector and the Board of Review but stands upon the proposition that the facts so found do not constitute any offense denounced by the Immigration Act of February 5, 1917, and declared therein to be legal grounds for the deportation of an alien out of and from the United States.

Appellant has conceded for the purposes of this appeal, that the facts so found are true; but he contends that the conclusions drawn by the Secretary of Labor from the facts so found constitutes a violation of the Immigration Act of 1917, are conclusions of law and a matter for judicial review whenever such conclusions are contrary to law.

Appellant, however, concedes no fact or facts not contained in the summary made by the examining inspector or the Memorandum filed by the Board of Review. Counsel's assertion (Appellee's Brief, page 9) to the effect that it was not "disputed that the two witnesses, Lorraine Gordon and Norma Bondly Lickert had been employed in" the Ardmore Rooms and the De Luxe Rooms "as prostitutes," is not a fact found by the examining inspector nor the Board of Review, and is contrary to the undisputed testimony that Miss Lickert was not a prostitute and did not work at either of these establishments as a prostitute, and that Lorraine Gordon, during times mentioned in her testimony when she alleges she shared the net proceeds of the business conducted in Ardmore Rooms there as landlady or

manager thereof, she did not herself practice prostitution at that time.

Counsel for appellee also asserts that "Two of the Government's witnesses directly identified the alien as the one who shared in their earnings as prostitutes" (Appellee's Brief, page 14). Counsel for appellee insists upon using the terms "sharing in the earnings of a prostitute" and "sharing with the landlady or manager of a house of prostitution the net proceeds of the business conducted in said establishment" as synonymous. An error that tends to mislead the Court and confuse the issues. The sharing with the prostitute is a deportable offense, the other is not. Appellant does not concede any fact or facts which exist solely by reasons of the assertions of counsel.

Counsel for appellee, without citation to, or quotation from, the Immigration Record, refers to the "direct evidence of alien's management of the De Luxe Rooms"; Appellee's Brief, page 14. Appellant has not been able to find such "direct evidence" and has no way of determining what portion of the evidence the appellee contends constitutes such "direct evidence." Appellant assumes that such "direct evidence" is not in the Immigration Record, and if such assumption be well founded, the alleged "substantiation" of such nonexisting testimony could not give substance to that which does not exist.

Appellant cannot agree with counsel for appellee in the interpretation of the Katz Case, 245 Fed. 316. Ap-

pellee, in its statements of the facts present in the Katz Case, concedes "there was no evidence that he (Katz) had any relation with the prostitutes . . . nor that he received any money from such prostitutes other than rentals. He was not in any way connected with the management or conduct of the business of prostitution." Appellee's Brief, page 11.

Appellee concedes that "under such circumstances the court correctly found that the alien did not come within the meaning of the statutory provisions for the deportation of an alien who is "receiving, sharing in or deriving benefits from the earnings of prostitutes." Appellee's Brief, page 11).

The same statement is true as to the facts presented in the case at bar. Neither the examining inspector nor the Board of Review found as a fact that appellant "had any relation with the prostitutes" who plied their immoral trade in the Ardmore Rooms or the De Luxe Rooms; "nor that he received any money from such prostitutes . . . " or, that "he was in any way connected with the management or conduct of the business of prostitution."

The findings in case at bar are to the effect that appellant received from Mrs. Alvarado a part of "the proceeds of the prostitution business conducted" at the Ardmore Rooms during the time Lorriane Gordon was working there as a prostitute; Memorandum filed by Board of Review. That while Gordon Lorraine was manager of the De Luxe Rooms she divided the net

proceeds from the business she operated there with Appellant. The Government introduced no evidence tending to indicate the consideration she received for the payments alleged to have been made by her beyond the facts above stated and that appellant was the "collector" for Tom Quin and Georgia Buck the reputed owners of these establishments and the rental thereof was paid by the occupant in this manner. Memorandum filed by the Board of Review contains the following language:

> "There is some indication that the connection of this alien with the business of prostitution in these two places may have been as the agent of Tom Quin, who is alleged to have been the employer of this alien and the Board of Review agrees with the stated opinion of the examining inspector that 'it is unnecessary to distinguish' whether the alien's connection with the business of prostitution in these places was that of a proprietor or that of an agent of a proprietor. The wording of the Immigration Act does not appear to require that for an alien to be deportable under the statute he need be shown to have a proprietary interest in the operation of a house of prostitution."

Appellant contends that the principle of law so announced by the examining inspector, and approved by the Board of Review, is erroneous and the application thereof to the facts, in the case at bar constitutes prejudicial error. The examining inspector and the Board of Review in applying such false principle of law as-

sumes that the Immigration Act of 1917 provides that ownership of a house of prostitution by an alien constitutes a deportable offense and that an alien agent of such owner who has never participated in the management and control of the immoral business conducted in said place is also subject to deportation. The Immigration Act of 1917 contains no such provisions.

In *Lindsey v. Dobra,* 62 Fed. (2) 116, cited by appellee (Appellee's Brief, page 13) the warrant of deportation was based upon ground that the alien "managed . . . a place of amusement or resort habitually frequented by prostitutes or where prostitutes gather"; the Court held it was not necessary to establish that the alien was connected with or had an interest in the activities of the prostitutes who frequented his resort in that the existence of such connection or interest was not an element of the offense upon which the Secretary of Labor sought to deport the alien.

If counsel for appellee submits the Dobra Case as authority for the principle that it is not necessary to establish that the alien was connected with, or had no interest in, the activities of the prostitutes who are inmates of the houses of prostitutions over which the Government contends the appellant was manager or connected with the management, it must be apparent to the Court the appellee has drawn an erroneous conclusion as to the law declared in said opinion. The Immigration Record contains neither evidence nor finding tending to establish that appellant knowingly, or at all,

assumed "any responsibility for the carrying on or conducting of the inhibited business" operated in the Ardmore Rooms or the De Luxe Rooms.

Was a Fair Hearing Accorded?

Appellant concedes the fairness of the proceedings had before the Immigration Service. This appeal is from errors in law that occurred during such proceedings.

> 3. Must an alien be caught in the act of receiving benefits from prostitutes, etc., at time of arrest to be comprehended within the statute directing deportation of such classes of aliens?

Appellee seeks to limit appellant's contention referred to in above question to the proposition that an alien must be caught in the acts of receiving benefits from prostitutes and "caught in the actual act of being connected with the management of a house of prostitution" (Appelle's Brief, page 18). Appellant presents no such point; he contends that under clause 6, Section 19, Act of February 5, 1917, the "alien . . . found connected with the management of a house of prostitution" shall be deported. On the other hand the alien who "shall receive, share in or derive benefit from any part of the earnings of any prostitute" or "any alien who manages . . . any house of prostitution" shall be deported. Appellant contends that as to charge that he was found connected with the management of a house of prostitution deportation proceedings must be brought at that time, and

if, the alien has terminated all connections with such inhibited business and refrains from participating therein for years, the Secretary of Labor has lost his right and authority to deport him for such conduct. Appellant raises no such contention as to the charge of "receiving, sharing in or deriving benefit from any part of the earnings of a prostitute" and the charge of "managing a house of prostitution"; to these charges appellant contends the facts found do not constitute any such deportable offense.

Appellant however does urge that the time fixed by the Immigration Act of 1917, during which an alien may be deported upon the grounds mentioned in said act by order of the Secretary of Labor, is not a statute of Limitation defining the time after the commission of any of the inhibited acts, during which an alien may be arrested and deported. The precise question here presented, as far as counsel has been able to discover by careful search, has not been before the Court. It seems that common justice would require some limitation should be placed upon the right of the Secretary of Labor to proceed in deportation of an alien who had led a moral and upright life for years after he had assisted a prostitute, received a few dollars from her earnings or been employed in a resort where prostitutes frequent. The law has placed limitations as to the time in which proceedings can be brought against the wrong-doer for nearly every crime except murder. Similar limitations should be applicable in cases of de-

portation when it appears that years have elapsed between the commission of the deportable offense and the issuance of warrant of arrest during which time the alien has refrained from having any interest in or connection with the inhibited business.

All of which is respectfully submitted.

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By.....
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